

# EXHIBIT C

65

*Reference -  
Can Scan Act*

The Honorable Alan A. McDonald

DOUGLAS E. MCKINLEY, JR.  
Attorney At Law  
P.O. Box 202  
Richland, Washington 99352  
Phone 628-0809 Fax (509) 628-2307

RECEIVED

JUN 26 2004

Randy Gainer

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JUN 24 2004

JAMES R. LARSEN, CLERK  
YAKIMA, WASHINGTON DEPUTY

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON  
AT RICHLAND

JAMES S. GORDON, JR.,  
an individual residing in  
Benton County, Washington.

Plaintiff,

vs.

COMMONWEALTH MARKETING  
GROUP, INC.,  
a Pennsylvania Corporation

Defendant.

NO. CV-04-5003-AAM

FIRST AMENDED COMPLAINT

TO: CLERK OF COURT

AND TO: Randy Gainer  
Davis Wright Tremaine LLP  
2600 Century Square - 1501 Fourth Avenue  
Seattle, Washington 98101-1688

COMES NOW, plaintiff, James S. Gordon, Jr., and brings this FIRST AMENDED COMPLAINT against defendant named herein. Plaintiff alleges the following on information and belief:

1. PARTIES

FIRST AMENDED COMPLAINT

1

DOUGLAS E. MCKINLEY, JR.  
Attorney At Law  
P.O. Box 202  
Richland, Washington 99352  
Phone 628-0809 Fax (509) 628-2307

*30*

*66*

1.1 Plaintiff James S. Gordon, Jr. is and was a resident of Benton County,  
Washington during the time of all acts complained of herein.

1.2 Defendant Commonwealth Marketing Group, Inc., is a Pennsylvania  
Corporation having its principle place of business located at 1 Millenium Dr.,  
Uniontown, PA 15401.

## 2. JURISDICTION

2.1 The Defendant regularly transacts business within the State of Washington.

2.2 As a result of the Defendant's transactions within the State of Washington, this  
Court has personal jurisdiction over the Defendant under RCW 4.28.185(1)(a).

2.3 The cause of action complained of herein includes allegations that commercial  
electronic messages sent by or on behalf of the Defendant to the Plaintiff violate  
RCW 19.190 et seq. and RCW 19.86 et seq. and includes a prayer for relief in  
excess of \$75,000, exclusive of interest and costs.

2.4 This Court has original jurisdiction over the subject matter of this complaint  
under 28 U.S.C. § 1332 as it is a controversy between citizens of different  
states, it contains allegations that the Defendant's conduct violated RCW 19.86  
et seq. and RCW 19.190 et seq., and the amount in controversy exceeds  
\$75,000, exclusive of interest and costs.

## 3. CAUSE OF ACTION

3.1 Plaintiff realleges Paragraphs 1.1 through 2.4 and incorporates them herein as if  
set forth in full.

3.2 The Plaintiff is the registrant of the internet domain name "Gordonworks.com."

3.3 At all times relevant to this action, the Plaintiff's status as a Washington  
resident is and was available, upon request, from the Plaintiff.

3.4 The Plaintiff's status as a Washington resident and the Plaintiff's internet  
domain name "Gordonworks.com" has been and is registered, at all times

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1 relevant to this complaint, with the Washington's Association of Internet  
2 Service Providers' (WAISP) database.

3 3.5 On or about September 2, 2003, the Defendant received a letter sent by Plaintiff  
4 by certified mail, return receipt requested, advising the Defendant that Plaintiff  
5 was a resident of the State of Washington, and that the Defendant was sending  
6 the Plaintiff commercial electronic mail messages to Plaintiff's domain  
7 "Gordonworks.com" which violated RCW 19.190 et seq. and RCW 19.86 et  
8 seq.

9 3.6 Despite this letter, the Defendant has continued to initiate the transmission,  
10 conspired with another to initiate the transmission, or assisted the transmission,  
11 of commercial electronic mail messages to the Plaintiff at Plaintiff's domain  
12 "Gordonworks.com."

13 3.7 In the time period subsequent to the Defendant's receipt of Plaintiff's letter on  
14 September 2, 2003, Plaintiff has received 1850 commercial electronic mail  
15 messages from the Defendant, or agents acting at the direction of and on behalf  
16 of the Defendant, at Plaintiff's domain, "Gordonworks.com."

17 3.8 The Defendant knew or consciously avoided knowing that the initiator of these  
18 commercial electronic mail messages was engaged in a practice that violates  
19 Washington State's consumer protection act, RCW 19.86.

20 3.9 All of the commercial electronic mail messages violate at least one prohibition  
21 of RCW 19.190.020 (1)(a) or (b) because each of the commercial electronic  
22 mail messages:

23 3.9.1 misrepresent or obscure information identifying the point of origin of the  
24 commercial electronic mail message, and/or

25 3.9.2 misrepresent or obscure information identifying the transmission path of the  
26 commercial electronic mail message, and/or

3.9.3 contain false or misleading information in the subject line of the commercial  
electronic mail message.

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1 3.10 Pursuant to RCW 19.190.030 (1)(a) and (b), all of the commercial electronic  
2 mail messages violate Washington State's consumer protection act, RCW 19.86,  
3 because each of the commercial electronic mail messages:

4 3.10.1 misrepresent or obscure information identifying the point of origin of the  
5 commercial electronic mail message, and/or

6 3.10.2 misrepresent or obscure information identifying the transmission path of the  
7 commercial electronic mail message, and/or

8 3.10.3 contain false or misleading information in the subject line of the commercial  
9 electronic mail message.

10 3.11 The Plaintiff fully expects that the Defendant, or the Defendant's agents acting  
11 on behalf of and at the direction of the Defendant, will continue to send  
12 commercial electronic mail messages to the Plaintiff throughout the period that  
13 resolution of this complaint is pending, which will also violate at least one  
14 prohibition of RCW 19.190.020 (1)(a) or (b) and constitute a per se violation of  
15 RCW 19.86 under RCW 19.190.030 (1)(a) or (b).

16 4. PRAYER FOR RELIEF

17 4.1 Plaintiff, James S. Gordon, Jr., prays for relief as follows:

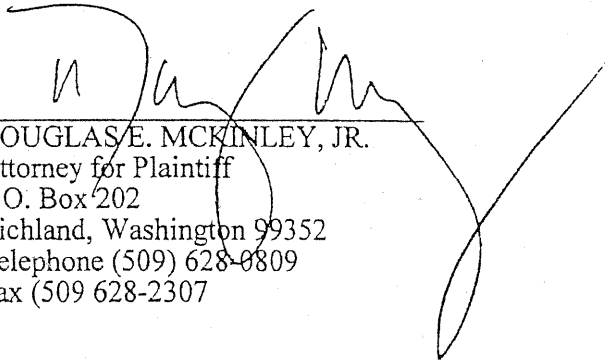
18 4.2 That the Court adjudge and decree that defendant has engaged, and continues to  
19 engage, in the conduct complained of herein.

20 4.3 That the Court adjudge and decree that the conduct complained of in paragraphs  
21 3.1 through 3.9.3, and paragraph 3.11, constitutes violations of the Commercial  
22 Electronic Mail Statute, RCW 19.190.020.

23 4.4 That the Court adjudge and decree that the conduct complained of in paragraphs  
24 3.1 through 3.11 constitutes violations of the Commercial Electronic Mail  
25 Statute, RCW 19.190.030, and therefore a violation of the Consumer Protection  
26 Act, RCW 19.86.

- 1 4.5 That the Court assess civil penalties, pursuant to 19.190.040(1) of five hundred  
2 dollars (\$500) per violation against defendant for each and every one of the  
3 violations of RCW 19.190.020 caused by the conduct complained of herein.
- 4 4.6 That the Court assess civil penalties, pursuant to RCW 19.86.140, of two  
5 thousand dollars (\$2,000) for each and every one of the violations of RCW  
6 19.86 caused by the conduct complained of herein.
- 7 4.7 That the Court enter judgment pursuant to RCW 19.86.140 providing that  
8 Plaintiff has been injured by the conduct complained of herein, and ordering that  
9 the Plaintiff recover from the defendant the costs of this action, including  
10 reasonable attorney's fees.
- 11 4.8 That the Court order such other relief as it may deem just and proper to fully and  
12 effectively remedy the effects of, and prevent future instances of, the conduct  
13 complained of herein, or which may otherwise seem proper to the Court.
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DATED this 20<sup>th</sup> day of May, 2004.

  
DOUGLAS E. MCKINLEY, JR.  
Attorney for Plaintiff  
P.O. Box 202  
Richland, Washington 99352  
Telephone (509) 628-0809  
Fax (509) 628-2307

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2 Attorney At Law  
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The Honorable Alan A. McDonald

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JUL 25 2004  
Randy Gainer

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF WASHINGTON  
10 AT RICHLAND

11 JAMES S. GORDON, JR.,  
12 an individual residing in  
13 Benton County, Washington.

14 Plaintiff,

15 vs.

16 COMMONWEALTH MARKETING  
17 GROUP, INC.,  
18 a Pennsylvania Corporation

19 Defendant.

NO. CV-04-5003-AAM

SECOND AMENDED  
COMPLAINT

JURY TRIAL REQUESTED

20 TO: CLERK OF COURT

21 AND TO: Randy Gainer  
22 Davis Wright Tremaine LLP  
23 2600 Century Square - 1501 Fourth Avenue  
24 Seattle, Washington 98101-1688

25 COMES NOW, plaintiff, James S. Gordon, Jr., and brings this SECOND AMENDED  
26 COMPLAINT against defendant named herein. Plaintiff alleges the following on  
information and belief:

1. PARTIES

SECOND AMENDED COMPLAINT

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Attorney At Law  
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Phone 628-0809 Fax (509) 628-2307

1.1 Plaintiff James S. Gordon, Jr. is and was a resident of Benton County, Washington during the time of all acts complained of herein.

1.2 Defendant Commonwealth Marketing Group, Inc., is a Pennsylvania Corporation having its principle place of business located at 1 Millenium Dr., Uniontown, PA 15401.

## 2. JURISDICTION

2.1 The Defendant regularly transacts business within the State of Washington.

2.2 As a result of the Defendant's transactions within the State of Washington, this Court has personal jurisdiction over the Defendant under RCW 4.28.185(1)(a).

2.3 The cause of action complained of herein includes allegations that commercial electronic messages sent by or on behalf of the Defendant to the Plaintiff violate RCW 19.190 et seq. and RCW 19.86 et seq. and includes a prayer for relief in excess of \$75,000, exclusive of interest and costs.

2.4 This Court has original jurisdiction over the subject matter of this complaint under 28 U.S.C. § 1332 as it is a controversy between citizens of different states, it contains allegations that the Defendant's conduct violated RCW 19.86 et seq. and RCW 19.190 et seq., and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

## 3. CAUSE OF ACTION

3.1 Plaintiff realleges Paragraphs 1.1 through 2.4 and incorporates them herein as if set forth in full.

3.2 The Plaintiff is the registrant of the internet domain name "Gordonworks.com."

3.3 At all times relevant to this action, the Plaintiff's status as a Washington resident is and was available, upon request, from the Plaintiff.

3.4 The Plaintiff's status as a Washington resident and the Plaintiff's internet domain name "Gordonworks.com" has been and is registered, at all times

SECOND AMENDED COMPLAINT

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- 1 relevant to this complaint, with the Washington's Association of Internet  
2 Service Providers' (WAISP) database.
- 3 3.4.1 Plaintiff is an interactive computer service as that term is defined in RCW  
4 19.190.010 (7)
- 5 3.5 On or about September 2, 2003, the Defendant received a letter sent by Plaintiff  
6 by certified mail, return receipt requested, advising the Defendant that Plaintiff  
7 was a resident of the State of Washington, and that the Defendant was sending  
8 the Plaintiff commercial electronic mail messages to Plaintiff's domain  
9 "Gordonworks.com" which violated RCW 19.190 et seq. and RCW 19.86 et  
10 seq.
- 11 3.6 Despite this letter, the Defendant has continued to initiate the transmission,  
12 conspired with another to initiate the transmission, or assisted the transmission,  
13 of commercial electronic mail messages to the Plaintiff at Plaintiff's domain  
14 "Gordonworks.com."
- 15 3.7 In the time period subsequent to the Defendant's receipt of Plaintiff's letter on  
16 September 2, 2003, Plaintiff has received 1850 commercial electronic mail  
17 messages from the Defendant, or agents acting at the direction of and on behalf  
18 of the Defendant, at Plaintiff's domain, "Gordonworks.com."
- 19 3.8 The Defendant knew or consciously avoided knowing that the initiator of these  
20 commercial electronic mail messages was engaged in a practice that violates  
21 Washington State's consumer protection act, RCW 19.86.
- 22 3.9 All of the commercial electronic mail messages violate at least one prohibition  
23 of RCW 19.190.020 (1)(a) or (b) because each of the commercial electronic  
24 mail messages:
- 25 3.9.1 misrepresent or obscure information identifying the point of origin of the  
26 commercial electronic mail message, and/or
- 3.9.2 misrepresent or obscure information identifying the transmission path of the  
commercial electronic mail message, and/or

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SECOND AMENDED COMPLAINT

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- 1 3.9.3 contain false or misleading information in the subject line of the commercial  
2 electronic mail message.
- 3 3.10 Pursuant to RCW 19.190.030 (1)(a) and (b), all of the commercial electronic  
4 mail messages violate Washington State's consumer protection act, RCW 19.86,  
5 because each of the commercial electronic mail messages:
- 6 3.10.1 misrepresent or obscure information identifying the point of origin of the  
7 commercial electronic mail message, and/or
- 8 3.10.2 misrepresent or obscure information identifying the transmission path of the  
9 commercial electronic mail message, and/or
- 10 3.10.3 contain false or misleading information in the subject line of the commercial  
11 electronic mail message.
- 12 3.11 The Plaintiff fully expects that the Defendant, or the Defendant's agents acting  
13 on behalf of and at the direction of the Defendant, will continue to send  
14 commercial electronic mail messages to the Plaintiff throughout the period that  
15 resolution of this complaint is pending, which will also violate at least one  
16 prohibition of RCW 19.190.020 (1)(a) or (b) and constitute a per se violation of  
17 RCW 19.86 under RCW 19.190.030 (1)(a) or (b).

18 4. PRAYER FOR RELIEF

- 19 4.1 Plaintiff, James S. Gordon, Jr., prays for relief as follows:
- 20 4.2 That the Court adjudge and decree that defendant has engaged, and continues to  
21 engage, in the conduct complained of herein.
- 22 4.3 That the Court adjudge and decree that the conduct complained of in paragraphs  
23 3.1 through 3.9.3, and paragraph 3.11, constitutes violations of the Commercial  
24 Electronic Mail Statute, RCW 19.190.020.
- 25 4.4 That the Court adjudge and decree that the conduct complained of in paragraphs  
26 3.1 through 3.11 constitutes violations of the Commercial Electronic Mail  
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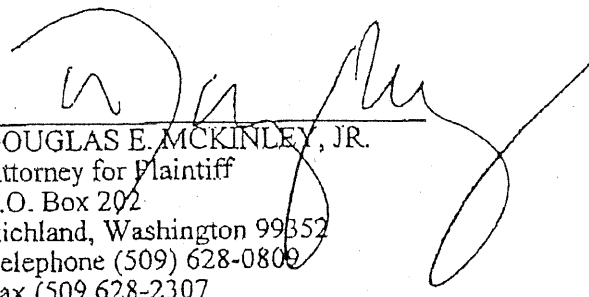
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SECOND AMENDED COMPLAINT

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Attorney At Law  
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- 1 4.5 That the Court assess civil penalties, pursuant to 19.190.040(1) of five hundred  
2 dollars (\$500) per violation against defendant for each and every one of the  
3 violations of RCW 19.190.020 caused by the conduct complained of herein.
- 4 4.5.1 That the Court assess civil penalties, pursuant to 19.190.040(1) of one thousand  
5 dollars (\$1,000) per violation against defendant for each and every one of the  
6 commercial electronic email messages sent through plaintiff's interactive  
7 computer service in violation of RCW 19.190.020.
- 8 4.6 That the Court assess civil penalties, pursuant to RCW 19.86.140, of two  
9 thousand dollars (\$2,000) for each and every one of the violations of RCW  
10 19.86 caused by the conduct complained of herein.
- 11 4.7 That the Court enter judgment pursuant to RCW 19.86.140 providing that  
12 Plaintiff has been injured by the conduct complained of herein, and ordering that  
13 the Plaintiff recover from the defendant the costs of this action, including  
14 reasonable attorney's fees.
- 15 4.8 That the Court order such other relief as it may deem just and proper to fully and  
16 effectively remedy the effects of, and prevent future instances of, the conduct  
17 complained of herein, or which may otherwise seem proper to the Court.

18  
19 DATED this 25<sup>th</sup> day of July, 2004.

20   
21 DOUGLAS E. MCKINLEY, JR.  
22 Attorney for Plaintiff  
23 P.O. Box 202  
24 Richland, Washington 99352  
25 Telephone (509) 628-0809  
26 Fax (509) 628-2307

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SECOND AMENDED COMPLAINT

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The Honorable Alan A. McDonald

RECEIVED

JUL 25 2004

Randy Gainer

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON  
AT RICHLAND

JAMES S. GORDON, JR.,  
an individual residing in  
Benton County, Washington.

Plaintiff,

vs.

COMMONWEALTH MARKETING  
GROUP, INC.,  
a Pennsylvania Corporation

Defendant.

NO. CV-04-5003-AAM

CERTIFICATE OF SERVICE

JURY TRIAL REQUESTED

TO: CLERK OF COURT

AND TO: Randy Gainer  
Davis Wright Tremaine LLP  
2600 Century Square - 1501 Fourth Avenue  
Seattle, Washington 98101-1688

The undersigned hereby certifies and declares under penalty of perjury under the  
laws of the State of Washington that on July 25, 2004, he caused a copy of the  
following documents:

(1) Second Amended Complaint

CERTIFICATE OF SERVICE - 1

DOUGLAS E. MCKINLEY, JR.  
Attorney At Law  
P.O. Box 202  
Richland, Washington 99352  
Phone 628-0809 Fax (509) 628-2307

## (2) Certificate Of Service

to be served upon the following party in the manner indicated:

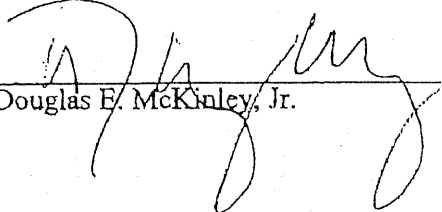
Randy Gainer, attorney for Defendant  
Commonwealth Marketing Group, Inc.

(X) Via US Mail  
( ) Via US Mail, Certified,  
Return Receipt Requested

Davis Wright Tremaine LLP  
2600 Century Square - 1501 Fourth Avenue  
Seattle, Washington 98101-1688

(X) Via Facsimile  
( ) Via Federal Express  
( ) Via Process Service

Executed at Richland, Washington this 25th day of June, 2004.

  
Douglas E. McKinley, Jr.

CERTIFICATE OF SERVICE - 2

DOUGLAS E. MCKINLEY, JR.  
Attorney At Law  
P.O. Box 202  
Richland, Washington 99352  
Phone 628-0809 Fax (509) 628-2307